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May 18, 2009

**Office of Bar Counsel**  
Board on Professional Responsibility  
District of Columbia Court of Appeals  
515 5th Street NW  
Building A, Suite 117  
Washington, DC 20001

Re: Complaint against Alice Fisher

Dear Sir or Madam:

## **NOTICE OF COMPLAINT**

Velvet Revolution (VR), a Washington, DC based non-profit with a network of over 150 organizations representing over a million members nationwide, including in D.C., herein lodges a complaint against Alice S. Fisher, former Deputy Assistant Attorney General, Criminal Division, Department of Justice, currently with Latham & Watkins LLP, 555 11th Street NW, Suite 1000, Washington DC 20004; Email: [alicesfisher@yahoo.com](mailto:alicesfisher@yahoo.com); Tel: (202) 637-2200. VR requests the *Board on Professional Responsibility, District of Columbia Court of Appeals* take immediate disciplinary action against Ms. Fisher for violations of the *D.C. Rules of Professional Conduct*.

## **SUMMARY OF COMPLAINT**

Alice S. Fisher breached her legal duty and violated the *D.C. Rules of Professional Conduct* by sanctioning immoral and unethical “extended” or “enhanced” interrogation techniques (amounting to torture) that resulted in clear violations of U.S. and international law.

Specifically, Ms. Fisher ignored over two centuries historical and legal precedents, and failed to exercise the “good faith” imperative with regard suspect legal analysis and prescriptions for detainee interrogation.<sup>[1]</sup> This conduct fell well outside of accepted and legal norms, and supported the false cover of claimed legality for those who ultimately engaged in acts and policies that, in fact, violated the following laws, both in letter and spirit:

- 1) The United Nations Convention Against Torture (UNCAT), Articles 1, 2, 3 and 16 (ratified in October 1994) implemented by Sections 2340-2340A of title 18 of the United States Code.
- 2) The Geneva Conventions, Article 3, (ratified in August 1955)
- 3) The Eighth Amendment against “cruel and unusual punishment”
- 4) The “Separation of Powers” constructs and imperatives of the U.S. Constitution
- 5) The United States Criminal Code, Title 18, Prohibitions Against Torture (18 USC 2340A) and War Crimes (18 USC 2441)

As the law of the land, these legal protections and dictates are clear. Ms. Fisher met with top-level government and military lawyers and interrogators <sup>[2]</sup> who formulated legal arguments and interrogation methods, many since repudiated, <sup>[3]</sup> that led directly to detainee abuses, and, evidence suggests, deaths at overseas U.S. military facilities <sup>[4]</sup>. In so doing Ms. Fisher impeded the administration of justice and violated the U.S. Constitution, the Geneva Convention, the Convention against Torture, the United States Criminal Code and several *D.C. Rules of Professional Conduct*. Ms. Fisher did not act in “good faith” but rather in a manner that was extremely prejudicial, grossly incompetent and clearly immoral.

Therefore, VR calls upon the Board on Professional Responsibility, District of Columbia Court of Appeals to act immediately to disbar Ms. Fisher for conduct that is a travesty of justice and an affront to the rule of law and the standards of professional lawyerly and ethical conduct.

Further, because the evidence points to violation of numerous laws, VR believes that disbarment will complement steps toward open hearings in Congress and criminal investigations by an independent counsel appointed by the Department of Justice.

## **LAW PROHIBITING TORTURE**

### **The U.S. Constitution -- The Supreme Law of the Land**

As the initial U.S. report to the *UN Convention against Torture* wrote:

“...the protections of the right to life and liberty, personal freedom and physical integrity found in the Fourth, Fifth and Eighth Amendments to the United States Constitution provide a nationwide standard of treatment beneath which no governmental entity may fall.” [49., p. 13, Initial Report submitted by the United States to the *Convention against Torture* in 1999 (CAT/C/28/Add.5)

U.S. citizens are guaranteed these protections. Jose Padilla is one example of a U.S. citizen who was held without charge for several years, and subject to the extreme

interrogation techniques advocated by Ms. Fisher. Citizens of other countries are similarly protected when in United States custody. The Eighth Amendment specifically prohibits cruel and unusual punishment.

#### **The Geneva Convention (1949)**

Common Article 3 of the *Geneva Conventions* broadly prohibits "violence to life and person," and specifically prohibits "mutilation, cruel treatment and torture" including "outrages upon personal dignity, in particular humiliating and degrading treatment". These terms include "other forms of cruel, inhuman and degrading treatment or punishment."

*The drafters of common Article 3 avoided a detailed list of prohibited acts in order to ensure that it had the broadest possible reach, leaving no loophole.*

[<http://www.amnestyusa.org/war-on-terror/reports-statements-and-issue-briefs/torture-and-the-law/page.do?id=1107981>]

The **Army Field Manual** on detainee treatment and interrogation is predicated on the Geneva Convention and specifically requires humane treatment of prisoners and detainees. Exhibit B

#### **UN Convention Against Torture (1994)**

Adopted by the United Nations in 1984, the Convention requires states to take effective measures to prevent torture within their borders. The United States ratified the Convention against Torture in October 1994 and it entered into force for the United States on November 20, 1994. To date, there are over 146 nations who are party to the convention.

Article 2(2) of the Convention states that:

*"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."*

#### ***Hamdan v. Rumsfeld* (2002) -- Due Process and Legal Protections**

The Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) held that the Geneva Conventions are applicable to accused members of al-Qaeda. Thus, due process protections apply to all detainees in U.S. custody, including those in military prisons (Guantanamo, Abu Grahیب, Bagram) as well as so-called "black sites" in Poland, Diego Garcia and elsewhere.

#### **CASE FOR DISBARMENT -- District of Columbia (D.C.) Rules of Professional Conduct**

The case for Ms. Fisher's disbarment is simple and clear. Above all, a lawyer must

demonstrate respect for the rule of law, the legal system, and over two centuries of legal precedent. However, in her work as Deputy Attorney General of the Criminal Division, Ms. Fisher did not.

As the protégé of Michael Chertoff, the head of the Criminal Division of the Bush Justice Department, Ms. Fisher played a significant advisory role to the “War Council” according to Jane Mayer, in *The Dark Side*<sup>[2]</sup> In such a capacity Ms. Fisher advanced a new legal regime that regarded due process of any kind as an undue burden, and which granted terror suspects neither the rights of criminal defendants nor the rights of prisoners of war. In fact, Ms. Fisher helped to approve and defined brutal interrogation “techniques” amounting to torture.

Ms. Fisher’s conduct is so far outside the bounds of legal practice that it falls under *D.C. Rules of Professional Conduct, Scope* (p. 4), which reads, **“The Rules do not exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.”**

Ms. Fisher served as the criminal section’s representative and joined “War Council” members in Guantanamo in September 2002. She participated in a number of other meetings with FBI agents at which detainee interrogation was discussed. Through this period, the torture program was advanced by the Administration. There is no evidence whatsoever that Fisher exercised appropriate moral or ethical judgment by objecting to the violent and degrading treatment. Clearly, by any objective measure, this alone is grounds for disbarment.

**Rule 3.1 B (Meritorious Claims and Contentions, p. 100)** calls for lawyers “to inform themselves about the facts of their clients’ cases and the applicable law” Further it clarifies that legal claims are frivolous if the lawyer is “unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument for an extension, modification, or reversal of existing law. Ms. Fisher contributed directly to a process that denied legal process for the detainees, ignoring relevant case law, including previous U.S. prosecutions of those who employed waterboarding. Accordingly, Ms. Fisher’s counsel was not made in “good faith”, was instead meant to apply a “fig-leaf” of legality and thus “frivolous”.

**Rule 1.2 (e) (Scope of Representation)** reads, “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law.”

Ms. Fisher, as a key lawyer in the Justice Department Criminal Division, helped to build the artifice of legal justifications and parameters for extreme torture techniques deemed by most legal scholars and experts to be torture. Therefore, Ms. Fisher violated Rule 1.2 (e), and inserted herself into the actual application of the torture rather than a **“good faith”** analysis of the applicable U.S. and international law bearing on questions of

interrogation and torture.

Rather than accept the definition of torture<sup>[5]</sup> as clearly defined by international law, Ms. Fisher, by her participation with Addington, Haynes and Gonzales of the “War Council,” pushed to re-define it altogether in order to justify harsh interrogation techniques..

Early leaks from the upcoming report from the DoJ’s *Office of Professional Responsibility*, point to evidence that legal analysis formulated by John Yoo (and advanced by the larger “War Council”) was fixed around administration policy that the Executive must be unrestrained by the Constitution and other applicable and accepted law.

In light of the above, it is clear that Alice Fisher demonstrated disregard for well-established rule of law, violating both the letter and spirit of the U.S. Constitution and the treaties that the U.S. had signed and ratified. Ms. Fisher’s advocacy of so-called “enhanced interrogation techniques” were not presented in “good faith” and was grossly unethical and immoral. By her participation in key meetings and deliberations with top “War Council” lawyers, Ms. Fisher advanced a conspiracy aimed to subvert the Supreme Law of the Land.

Therefore, VR calls upon the *Board on Professional Responsibility, District of Columbia Court of Appeals* to take disciplinary action against Ms. Fisher.

## **KEY DOCUMENTS IN EVIDENCE**

In order to build the case for disciplinary action against Alice Fisher, Jay Bybee, John Yoo, and other lawyers advocating for, and defining so-called “enhanced interrogation” and to examine the origins of the legal advocacy, it is necessary to review an extensive body of evidence and investigative reporting and analysis, including the following documents/articles:

- 1) Memoranda prepared by lawyers in the Bush Justice Department's Office of Legal Counsel (OLC). [[http://www.aclu.org/safefree/general/olc\\_memos.html](http://www.aclu.org/safefree/general/olc_memos.html)]
- 2) The Senate Armed Services Committee Investigation (SASCI) *See*, Attachment B, Senate Armed Services Inquiry Into the Treatment of Detainees in U.S. Custody, released December 2008 (SASCI), pg. xxviii.  
<http://levin.senate.gov/newsroom/release.cfm?id=305735>  
<http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>
- 3) Memo released by the Senate Intelligence Committee  
<http://intelligence.senate.gov/pdfs/olcopinon.pdf>
- 4) The Red Cross Report on Detainee Treatment, Exhibit J.
- 5) Investigative Reporting:

- a. *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*
- b. “Report: Abusive tactics used to seek Iraq-al Qaida link”; Jonathan S. Landay, *McClatchy Newspapers* -- Tue, Apr. 21, 2009

1) The **OLC memoranda** offered the patina of legal sanction to the use of techniques such as waterboarding, hypothermia, stress positions, extensive sleep deprivation and confinement with stinging insects to exploit prisoner phobias.

The memos, by carefully defining parameters, clearly demonstrate that the authors of the memos were deeply engaged in the application of torture techniques, not merely giving abstract legal counsel.

2) The **Senate Armed Services Committee report** provided a detailed chronology of the process of formulation of policy respecting the treatment of prisoners, with a special focus on the introduction of torture techniques.

Senior officials in the U.S. government decided to use some of these harsh techniques against detainees based on deeply flawed interpretations of U.S. and international law.

[Levin, McCain Release Executive Summary and Conclusions of Report on Treatment of Detainees in U.S. Custody, December 11, 2008]

4) The **Red Cross Report On Detainee Treatment** was prepared from interviews with a number of detainees and others. In short, it confirms that the types of torture techniques advocated by the attorney we have complained about here were in fact used against many detainees. These techniques included suffocation by water, prolonged stress standing, beatings by use of a collar, beating and kicking, confinement in a box, prolonged nudity, sleep deprivation, continuous loud noises, exposure to cold temperature and cold water, threats, forced shaving, and deprivation of food. Exhibit J

5) In **testimony at a Senate hearing** on May 13, 2009, Former State Department counselor Philip Zelikow told a committee panel that Bush administration officials engaged in a ‘collective failure’ with regard to the detention and interrogation of suspected terrorists. He asserted that the torture memos were unsound because “the lawyers involved ... did not welcome peer review and indeed would shut down challenges even inside the government.” Georgetown University law professor David Luban testified that the Justice Department torture memos constituted “an ethical train wreck” because they violated constitutional, statutory and international law.

<http://www.washingtonpost.com/wpdyn/content/article/2009/05/13/AR2009051301281.html>

6) The **Senate Intelligence Committee memo** details the steps leading to issuance of the OLC memos and identified the Justice Department lawyers and others involved in the process. The memo details a systematic authorized program for the mistreatment and torture of persons denied rights of due process. [Letter from Attorney General Eric Holder, Jr. to Senator John. D. Rockefeller IV of the SSCI forwarding declassified narrative, (April 17, 2009).]

4) **Investigation Reporting/Biographies:** Select reporting from credible sources further suggests that following the attacks of 9/11/01, a host of controversial and illegal policies were advanced persistently and systematically by a small group of lawyers to serve narrow policy goals and political ambitions, with a primary aim of vastly amplifying the power of the Presidency, in direct threat to the system of checks and balances elucidated in the U.S. Constitution.

## ENDNOTES

[1] See *ProPublica's* comprehensive list of legal memoranda on controversial Bush policies regarding detentions, interrogations and warrantless wiretapping.  
<http://www.propublica.org/special/missing-memos>.

A detailed listing of torture related legal memoranda is available here:  
<http://www.aclu.org/safefree/torture/torturefoia.html> Exhibit A

The most recently declassified memos from Yoo's *Office of Legal Counsel* can be found here: [http://www.aclu.org/safefree/general/olc\\_memos.html](http://www.aclu.org/safefree/general/olc_memos.html) Exhibit O

[2] Mayer, Jane; *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*, Doubleday, 2008; page 198.

According to an account provided Mayer, a September 26, 2002 meeting and tour in Guantanamo Bay Detention Center included David Addington, Vice President's counsel (described as the "guy in charge"), White House counsel Alberto Gonzales, Sec. Rumsfeld's top counsel James Haynes III, CIA lawyer John Rizzo, John Yoo's colleague at the Office for Legal Counsel Patrick Philbin, the Pentagon's General Counsel Jack Goldsmith and Alice Fisher.

In her book Mayer sources "hard-line law-and-order stalwarts in the criminal justice system" to describe how beginning on 9/11/01, a group who called themselves the "War Council" worked to upend the American system of law and checks and balances in order to exercise a new legal paradigm for Executive Power.

This meeting would suggest that, a year after Addington formed the ad-hoc "War Council" it had grown to include Fisher at the Criminal Division of the DoJ, Rizzo at the CIA, and Goldsmith at Defense.

Under the primary direction of David Addington, the "War Council" worked methodically to vastly expand presidential authority ("not limited by any laws") in which the president "had the power to override existing laws that Congress had specifically designed to curb him." The original 'War Council' which convened on 9/11/01 included John Yoo of the OLC, William James Haynes from the Department of Defense and Timothy E. Flanigan and Alberto Gonzales, from the White House.

Chertoff too had a direct hand in definition of the new legal regime according to Mayer's sources:

"...according to a top CIA official directly involved at the time, as well as a former top Justice Department official involved in a secondhand way, Chertoff was consulted extensively about detainee' treatment. The former senior Agency official said with disgust, "Chertoff, and Gonzales, and all these guys act like they know nothing about this now, but they were all in the room." The source alleged that "Chertoff was on the phone" with the CIA's general counsel, Scott Miller, "almost every day. Sometimes several times a day. He had to advise them at every turn about what was criminal."

Of particular interest is a claim by a top Justice Department official who told Mayer that Chertoff had significant contact with one of the five members of the "War Counsel":

The former Justice Department lawyer who was involved on these issues with the Bush White House said that Chertoff spoke frequently with William Haynes, the Pentagon's General Counsel, about where to draw the line on military interrogations as well.

Given the details and participants of the September 2002 meeting and the fact she is widely regarded as Chertoff's protégé, it is a virtual certainty that Ms. Fisher acted to support and advance the new "legal paradigm" that allowed torture to be implemented.

[3] See April 15, 2009, *Memorandum to the Attorney General Re. The Withdrawal of Office of Legal Counsel Opinions* mentioning the legal opinions expressed in dated memoranda written by Jay S. Bybee, Assistant Attorney General and Steven G. Bradbury, Principal Deputy Assistant Attorney General.  
[[http://media.mcclatchydc.com/smedia/2009/04/16/16/Taylor-OLCops\\_withdrawal.source.prod\\_affiliate.91.pdf](http://media.mcclatchydc.com/smedia/2009/04/16/16/Taylor-OLCops_withdrawal.source.prod_affiliate.91.pdf)]

The TIMES Online reported:

"Jack Goldsmith, who succeeded Jay Bybee - the author of many of these memos - at the Office of Legal Counsel, has since declared that they had 'no foundation' in any source of law and rested on 'one-sided legal arguments'. **Their purpose, he said, was to provide the CIA with a 'golden shield' against criminal prosecution of agents.** After all, the US prosecuted waterboarding as torture when the Japanese used it against American troops during Second World War."  
[[http://www.timesonline.co.uk/tol/news/world/us\\_and\\_americas/article6116281.ec](http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6116281.ec)]

In his confirmation hearings, however, Chertoff said he had played a very limited role...."

**[4] Unredacted Church Report Documents (Previously Classified) (2/11/2009)**

<http://www.aclu.org/safefree/torture/387101gl20090211.html>

<http://www.aclu.org/torturefoia/released/021109.html>

These reports from the Criminal Investigation Division of the Dept. of Justice detail the deaths of a number of detainees at Bagram Air Force Base in Afghanistan and at prisons in Iraq. Thus far, 21 homicides have been confirmed, eight of which resulted from abusive interrogation techniques.

**[5] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** was adopted by the United Nations General Assembly in 1984 and entered into force on June 26, 1987.

It defines torture as any act by which: “severe pain or suffering, whether physical or mental; is intentionally inflicted on a person; for such purposes as”:

- a) obtaining from him/her or a third person information or a confession
- b) punishing him/her for an act s/he or a third person has committed or is suspected of having committed
- c) intimidating or coercing him/her or a third person,
- d) or for any reason based on discrimination of any kind;

When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.\*

<http://www.amnestyusa.org/war-on-terror/reports-statements-and-issue-briefs/torture-and-the-law/page.do?id=1107981>

The Convention Against Torture is implemented by Sections 2340-2340A of title 18 of the United States Code.

Sincerely,



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